

ESTTA Tracking number: **ESTTA50121**

Filing date: **10/24/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<b>Proceeding</b>	92044876
<b>Party</b>	Defendant Wazana Brothers International, Inc. Wazana Brothers International, Inc. 9111 Mason Avenue Chatsworth, CA 91311
<b>Correspondence Address</b>	Wazana Brothers International, Inc. 9111 Mason Avenue Chatsworth, CA 91311
<b>Submission</b>	Motion to Suspend
<b>Filer's Name</b>	Stacy West
<b>Filer's e-mail</b>	swest@mdfslaw.com
<b>Signature</b>	/swest/
<b>Date</b>	10/24/2005
<b>Attachments</b>	Motion - 101005 - Filing.pdf ( 3 pages )

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

3 PRINTING TECHNOLOGY, INC.,

Cancellation No. 92044876

4 Petitioner,

5 v.

6 WAZANA BROTHERS INTERNATIONAL,  
7 INC.,

8 Respondent.

9  
10 RESPONDENT'S MOTION TO SUSPEND PROCEEDINGS PURSUANT TO  
11 37 CFR § 2.117(a) BASED UPON FILING OF CIVIL ACTION

12 Respondent, Wazana Brothers International, Inc. ("WB"), by and through its attorneys,  
13 respectfully requests suspension of these proceedings under 37 CFR § 2.117(a) because there is a  
14 civil action by Respondent against Petitioner, the final determination of which will have a bearing on  
15 the issues before the Board in these proceedings. In further support of its motion to suspend the  
16 proceedings, Respondent submits the following rationale:

17 Attached is a copy of the Complaint WB filed August 2, 2005, in the United States District  
18 Court for the Central District of California, Western Division, as a Civil Action captioned Wazana  
19 Brothers International, Inc. v Printing Technology, Inc., Civil Action No. 2:05-CV-05596 (the "Civil  
20 Court Action"). WB's Complaint alleges infringement by Petitioner of Respondent's rights in the  
21 registered trademark at issue in these proceedings - CHOOSE QUALITY, U.S Registration  
22 No. 2859961.

23 The final determination of the Civil Court Action likely will dispose of the issues in the  
24 present cancellation proceedings pending before the Board. Thus, suspension of these proceedings  
25 is appropriate pending the final determination of the Civil Court Action. See, e.g., 37 CFR  
26 § 2.117(a); General Motors Corp. v. Cadillac Club Fashions Inc., 22 USPQ2d 1933 (TTAB 1992);  
27 Tokaido v. Honda Associates Inc., 179 USPQ 861 (TTAB 1973); and Whopper-Burger, Inc. v.

Burger King Corp., 171 USPQ 805 (TTAB 1971).

The Civil Court Action involves the same parties and issues which are central to this cancellation proceeding. The Civil Court Action involves the validity of Respondent's registration for the CHOOSE QUALITY trademark and asserts claims directed toward infringing use by the Petitioner. The Civil Court Action's final determination likely will resolve the issues in these opposition proceedings fully. The decision of the Federal District Court is binding upon the Board, while the decision of the Board is not binding upon the Court. See Goya Foods Inc. v. Tropicana Products Inc., 846 F.2d 848, 6 USPQ2d 1950 (2d Cir.1988); American Bakeries Co. v. Pan-O-old Baking Co., 650 F Supp 563, USPQ2d 1208 (D.Minn. 1986); See, SCOA Industries Inc. v. Kennedy & Cohen, Inc., 188 USPQ 411 (TTAB 1975).

Based upon the foregoing, Respondent respectfully requests that proceedings in this action be suspended pending the disposition of the pending District Court action. Should the Civil action not fully resolve the dispositive issues in these proceedings, the opposition proceedings may be resumed with the resetting of all relevant time periods. Respondent's counsel recognizes the duty to advise the Board upon disposition of the District Court Case.

Respectfully Submitted,

### One of the Respondent's Attorneys

**DARREN S. ENENSTEIN**  
**NED M. GELHAAR**  
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1 CERTIFICATE OF FILING

2  
3 I hereby certify that this paper is being filed on line with the TTAB on October 19, 2005.

4 \_\_\_\_\_  
5 NED M. GELHAAR

6  
7 CERTIFICATE OF SERVICE

8 I hereby certify that a true and correct copy of the foregoing RESPONDENT'S MOTION TO  
9 SUSPEND PROCEEDINGS PURSUANT TO 37 CFR § 2.117(a) BASED UPON FILING OF  
10 CIVIL ACTION was served by first class mail upon counsel for Petitioner, by depositing same with  
the United States Postal Service, first class mail, postage prepaid, on October 19, 2005 in an  
envelope addressed to:

11  
12 Alan I. Cyrlin, Esq.  
13 Wasserman, Comden, Casselman & Pearson LLP  
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Tarzana, CA 91357-7033

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18 NED M. GELHAAR  
19 One of Respondent's Attorneys  
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